

MINUTES
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
Monday, November 17, at 9:00 a.m.
State Capitol Building, Room 172
Helena, MT

PRESENT: Governor Brian Schweitzer, Attorney General Mike McGrath, Secretary of State Brad Johnson, and Superintendent of Public Instruction Linda McCulloch

VIA TELEPHONE: Auditor John Morrison

Ms. McCulloch moved for approval of the minutes from the October 20, 2008, meeting of the Board of Land Commissioners. Seconded by Mr. McGrath. Mr. Morrison and Mr. Johnson were absent for this vote. Motion carried 3-0.

BUSINESS CONSIDERED:

1108-1 DEPARTMENT OF COMMERCE: FINAL APPROVAL FOR THE TRANSFER OF THE MALTA DINOSAUR MUSEUM TO THE CITY OF MALTA

Mr. Johnson joined the meeting.

Ms. Sexton stated this is final approval for the 351 (77-2-351, MCA) transfer of the Great Plains Dinosaur Museum to the City of Malta.

Kelly Casillas, Department of Commerce attorney, stated that Commerce has completed one environmental assessment and an updated appraisal since preliminary approval was granted by the Land Board (October 15, 2008). The State Historic Preservation Office indicated there were no historical resources that would be affected. A Real Property Agreement was drafted for the city of Malta, specifying control and purpose, including a revisionary clause allowing control of the facility to revert to the state should the city fail to adhere to the specified parameters of purpose.

Anne Boothe, Phillips County Economic Growth Council executive director/Judith River Foundation member, stated that the city of Malta is capable of owning and operating the museum. She thanked Commerce for their assistance in the proposed transfer.

Carolyn Schmoeckel, Judith River Foundation president, spoke of the strong working relationship between the foundation and the city.

Mr. Morrison joined the meeting via telephone.

Byron Ereaux, mayor of Malta, stated that the city has taken a very active role in the development of, and participation in the museum. He emphasized the commitment of the city to ensure the success of the museum.

Motion made by Ms. McCulloch for final approval of the transfer. Seconded by Mr. McGrath.

Mr. McGrath reiterated that the agreement is written in order to be concise in the expectations of the state for the operation of the museum. The correct contingencies are in place should reversion of ownership ever need to be considered.

Motion carried unanimously.

1108-2 FWP: CORNWELL RANCH CONSERVATION EASEMENT

Ms. Sexton stated this is a proposal from FWP to purchase a conservation easement on the Cornwell Ranch property.

Paul Sihler, FWP Field Services Administrator, outlined the history of the project.

- ♦ In 2005, FWP created the Comprehensive Conservation Strategy to identify species and critical habitats that were necessary to be conserved in order to prevent future endangerments.
- ♦ Two key areas identified were the Big Hole Valley and the Glaciated Plains area.
- ♦ The Milk River Initiative was launched in regard to the Glaciated Plains area. The initiative included conservation easements on various areas surrounding portions of the Cornwell Ranch.

Mr. Sihler noted that the ranch is 24,000 acres and holds grazing leases on an additional 100,000 acres of BLM and DNRC land. The cost of the conservation easement would be \$5,050,000 (\$210/acre). The property supports diverse wildlife species, including whitetail deer, antelope, sage grouse, sharp-tailed grouse, turkey, pheasant, waterfowl, and migratory songbirds.

Mr. Sihler noted that this area has been prioritized by the Nature Conservancy and the World Wildlife Fund as being a globally significant area of short-grass prairie and home to several species of at-risk grassland birds. The easement would prevent development and subdividing, sodbusting, use rest-rotation to manage grazing, and would allow permanent hunting access.

The proposal had previously brought before the Land Board in June 2008, but was deferred in order to address DNRC concerns that mandated rest-rotation would have an adverse effect on the competitive bids for future grazing leases. FWP has disincluded the DNRC land in the grazing management. Other concerns that were addressed were:

- ♦ DNRC concern that the easement would restrict access to four isolated parcels. To address that concern, the Cornwell Ranch committed to nominating the property for sale under the land banking program if the conservation easement was approved and completed. The Cornwell Ranch agreed to place \$1 million in escrow for the purchase.
- ♦ The language of the conservation easement has been revised to allow for new access roads to reach two sections of school trust lands that do not currently have road access.

Mr. Sihler stated that FWP received 48 public comments in support of the project, and two comments opposed to the project. Additionally, there was one concern about shooting areas, which has been addressed.

Dave Dietrich, Cornwell family attorney, stated that the many months of negotiation reflect a balance between the property owner rights and Montana trust stewardship rights. He noted that the project would bring tremendous benefit to the Cornwell family, the many sportsmen organizations, and the conservationists of the area.

Mr. Dietrich stated that there have been disproportionately fewer acres dedicated to conservation easements in the northeastern portion of Montana than in other parts of the state. Conservation easements offer a means of preserving legacy ownership, and create a system of checks and balances between the property owners and the state government.

Debby Cornwell asked the Land Board for their support of the conservation easement. She emphasized the Cornwell family's history of land stewardship, conservation, and the family's commitment to preserve that legacy.

Lee Cornwell, co-owner of the Cornwell Ranch, noted that much of northeastern Montana has lately been purchased by out of state interests. The desire he and his two brothers shared was, and remains, to protect and preserve the land as undisturbed as possible for future generations.

Ted Schye, former state Representative from Glasgow, offered his support of the project. He stated that over the years he has heard feedback from area residents and sportsmen who are in favor of this type of preservation. Mr. Schye referenced the 1987 Legislative Session, during which House Bill 526 was enacted with the intent of creating conservation easements or fee title purchases. Over the years it has become more difficult for hunters to locate access.

Janet Ellis, Montana Audubon Society, reiterated the importance of preserving the area because it is the best remaining short-grass prairie in the country. She noted the concerns over the price of the project, but said that despite the high cost, there was potential for the state to generate return revenue as a result of the proposed land banking consideration.

Motion made by Mr. Johnson to approve the conservation easement. Seconded by Ms. McCulloch.

Governor Schweitzer stated that USDA regulations already protect this land from being sobdusted. He referenced the outrage expressed by his opponent [Roy Brown] in the recent gubernatorial pre-election debates over the state purchasing such large tracts of land. He questioned the appraised value attached to the land at this time, citing both his credentials as a soil scientist and an individual who buys and sells ranches. He stated that appraisals completed on similar tracts have values significantly lower than the Cornwell Ranch. He expressed his concerns over the valuation, as well as his understanding of the importance of legacy and preservation. Governor Schweitzer referenced a map to illustrate existing access to state and BLM land. He reiterated his understanding of the subjective nature of the appraisal process, and his concerns that the appraised value of this land is significantly higher than similar properties.

Mr. Morrison expressed his misgivings over the expense of the project. He stated his understanding of the importance of preserving this grassland. He inquired if there was potential for additional price negotiations?

Mr. Dietrich stated that he believed the Wheeler appraisal (which was used as a basis to determine the value of the Cornwell land) to be consistent with current, comparable sales value. The Cornwell family is open to negotiation. Mr. Deitrich asked the Land Board to provide additional methods to review other appraisals.

Mr. Morrison stated that since the Cornwell family is willing to enter into additional discussion regarding valuation, he does not believe the Land Board should consider approving this project at this time.

Mr. McGrath stated that he appreciates the efforts of FWP in creating this proposal. He also stated his understanding of the easement's significance, but expressed concern regarding the impact that such an expensive purchase might have on the viability of future projects. Mr. McGrath concurred with Mr. Morrison's above statement.

Mr. Johnson offered a substitute motion to his earlier motion. The new motion was, "...to direct the appropriate staff members from FWP and DNRC to enter into further negotiations with regard to the price." Substitute motion seconded by Ms. McCulloch.

Ms. McCulloch stated her support of conservation easements, particularly for those in northeastern Montana; but, she expressed concern about the appraisal price. She stated that it has been her goal as a member of the Land Board to offer fair market value for land.

Mr. Morrison requested the board vote on the substitute motion to reject the current proposal in favor of the parties' renegotiating the project value.

Governor Schweitzer stated, "The substitute motion before the Land Board is to reject the proposal and send it back to FWP¹ for further discussion with the land owners."

Substitute motion carried unanimously.

Mr. Morrison withdrew from the meeting.

**1108-3 FWP: HAGLER RANCH ACQUISITION – ELK ISLAND MANAGEMENT AREA
ADDITION AND FISHING ACCESS SITE**

Mr. Sihler stated that FWP would acquire 163.43 acres for \$332,822. Funding is from the Habitat Montana and Access Montana programs. The acquisition would provide boat access, as well as a fishing access site. It would protect the riparian habitat, broaden the footprint of the existing wildlife management area, and prevent subdivisions. The acquisition would also allow FWP to reclaim 70 acres of irrigated cropland, which would be restored to native riparian vegetation and provide dense nesting and brood cover for resident wildlife.

There were no comments in opposition. Nine comments were received expressing support.

Motion made by Mr. McGrath to approve the acquisition. Seconded by Mr. Johnson. Carried 4-0 (Mr. Morrison absent).

1108-4 FWP: NORTH SHORE STATE PARK AND WILDLIFE MANAGEMENT AREA

Mr. Sihler stated that funding for this project is primarily from the Access Montana Program. Additional funding is from the Doris Duke Charitable Foundation, along with private funding raised by the Flathead Land Trust. The appraised value of the property is \$1,890,000. The project is the first step of the "River to Lake Initiative," and the intent of project is to combine disparate parcels to facilitate the preservation of the area (including a USFWS waterfowl production area). There is a proposed 250-acre development near Somers. That development was denied by Flathead County, but a new proposal is being negotiated.

FWP received 52 comments expressing support of the project in order to preserve the habitat of the area, preclude development along the North Shore, and allow greater public access.

¹ Governor Schweitzer did not include DNRC in the action because the appraisal of the Cornwell Ranch conservation easement is an FWP matter and does not involve the DNRC.

Motion made by Ms. McCulloch to approve the acquisition. Seconded by Mr. McGrath. Carried 4-0 (Mr. Morrison absent).

1108-5 FWP: SUN RIVER/LEWIS ACQUISITION

Mr. Sihler stated that access along the Sun River is limited, and that this acquisition would provide greater access on both sides of the river for approximately one mile. The cost for this acquisition is \$235,000. The original property owner has died since the initial approval by the Land Board of the 134 acres in [June] 2005, and there was consideration for the property to be sold for a gravel pit. FWP determined it was preferable to purchase the entire 164.07 acres rather than the 134 acres.

Motion made by Mr. McGrath to approve the acquisition. Seconded by Mr. Johnson. Carried 4-0 (Mr. Morrison absent).

1108-6 CORRAL CREEK CBNG PLAN OF DEVELOPMENT

Ms. Sexton presented an environmental assessment (EA) for the plan of development (POD). The project was proposed by Fidelity Production and Exploration and is tiered to an environmental impact statement (EIS) performed in 2003 by the federal government and the Montana Board of Oil and Gas Conservation (MBOGC). The DNRC received several comments expressing concern over sage grouse habitat and potential draw-down of the Tongue River Reservoir. These comments are addressed in the EA.

The proposal is for 23 CBNG wells. Seven would be on school trust land, and one would be near the reservoir on land owned by the DNRC Water Resources Division. Ms. Sexton noted that the Land Board had requested all EAs for CBNG be brought before the board.

Beth Kaeding, Northern Plains Resource Council chair, said that one of the core principals of the organization is stewardship. NPRC is not inherently opposed to CBNG, but the focus is that it be performed correctly and safely. NPRC also believes that the economic, environmental, and social costs of doing business in Montana should not be transferred to the general public. NPRC successfully entered into litigation in federal court regarding the 2003 EIS. The supplemental EIS was released on November 7, 2008. Only twice in eight months did the gauging stations along the Tongue River indicate levels below the accepted standards of non-degradation. Ms. Kaeding expressed concern that some of the proposed wells are located on the shores of the reservoir. She requested that the DNRC wait until the final and supplemental EIS are completed and to tier the EA to those.

Art Hayes, Jr., Tongue River Water Users Association president, expressed concern about the loss of water from the reservoir, as well as the potential for reverse flow back to the reservoir. Additionally, there is a fault line that bisects the reservoir. Since 2002 there has been a significant amount of venting through the fault line.

Mr. Hayes stated that the main concern is Montana's current involvement in litigation with the state of Wyoming over the Yellowstone Compact. Part of the compact addresses the loss of water to the Tongue River from CBNG development. TRWUA also has concerns regarding litigation with Wyoming involving standards. The water produced by state wells would be discharged back into the river through a discharge permit. The non-degradation standards cannot be met with the discharge permit.

TRWUA was notified one week ago that water discharged under the permit does not pass the toxicity test—aquatic life is dying. Colstrip High School has in the past

monitored aquatic life below the dam and has reported the loss of many salt-sensitive species.

Mr. Hayes stated that he has attended several meetings in Wyoming, which is proposing watershed permitting that would allow a certain amount of water to be dumped into every watershed that is permitted. He stated that when he addresses the audience at these meetings, the Fidelity Exploration and Production permit is presented as an example of what they opposed to. His opposition asks why if Montana allows "x " amount of water, Wyoming should not be allowed to do likewise? The irrigators of the Tongue River are bearing the cost of highly salinized water being introduced into irrigation water.

Mr. Hayes requested that the Land Board vote against accepting this EA and ROD.

Mr. Morrison rejoined to the meeting, via telephone.

Brenda Lindlief-Hall, TRWUA attorney, reiterated that the potential for the loss of water is significant. While the Land Board is accountable only for the stewardship of school trust lands, the cumulative impact from the proposal will be adverse. The development relies on permits held by Fidelity to dispose of the CBNG wastewater. At least one of the permits is being challenged by the Northern Cheyenne Tribe for being invalid, as the permit does not incorporate best available technology as required by the *Federal Clean Water Act* and the *Montana Water Quality Act*.

Denise Wood, Diamond Cross Ranch, stated that it would be premature to grant approval at this time, as water management practices have been negligible.

Jon Metropoulos, Fidelity Production and Exploration attorney, stated that there are Fidelity representatives available to address any questions and concerns.

Motion made by Mr. McGrath to deny the Corral Creek CBNG plan of development. Seconded by Mr. Morrison.

Mr. McGrath stated that Montana is currently involved in active litigation with the state of Wyoming on several fronts regarding the Tongue River, particularly, the enforcement of the Yellowstone Compact. He expressed significant concerns that if the Land Board approves the project there will be an impact on the validity of the stance Montana is taking in the litigation. Mr. McGrath stated that there is conflicting hydrological information from the EA and other Reserved Water Right Compact Commission documents. The information is more specific to the site of the proposal. He noted that there have been a series of violations regarding the testing of the discharge. Mr. McGrath stated that there needs to be more information available.

Motion to deny carried 4-1 (Mr. Johnson dissenting).

1108-7 TIMBER SALE: MOSQUITO CREEK

Ms. Sexton stated this timber sale is on 161 acres and is for seed tree harvest, commercial thinning, and shelterwood. It will require 2.79 miles of new road construction and 1.8 miles of reconstruction/reconditioning, which will also be used for future harvests. There is a grazing lease that will be suspended for the duration of the harvests.

Motion was made by Ms. McCulloch to approve this timber sale. Seconded by Mr. McGrath. Carried unanimously.

Ms. Sexton informed the land board that the DNRC will be issuing mailings for Habitat Conservation Plan. There will be a public comment period covering bull trout, other fish species, grizzly bear and lynx.

1108-8 FINAL APPROVAL FOR SALE OF LAND BANKING PARCELS:

Ms. Sexton gave a brief overview of each county.

A. BLAINE COUNTY

The parcels in Blaine County range from 5 to 640 acres. The public auction was held on October 30, 2008. All parcels had only one bidder per parcel, and were all sold for the minimum bid. All parcels were appraised with access value. The total amount for all parcels is \$324,450. The average price was \$250 per acre.

Motion made by Mr. Johnson for final approval of the sale of parcels in Blaine County. Seconded by Ms. McCulloch. Carried unanimously.

B. CHOUTEAU COUNTY

The parcels in Choteau County range from 40 to 102 acres. All the parcels are isolated. Public auction was held on October 29, 2008. There was no competitive bidding and all parcels sold for the minimum bid. The average price was \$260 per acre, for a total amount of \$227,366.

Motion made by Ms. McCulloch for final approval of the sale of parcels in Choteau County. Seconded by Mr. McGrath. Carried unanimously.

1108-9 SET MINIMUM BIDS FOR LAND BANKING PARCELS

Ms. Sexton gave a brief overview of each county.

A. FERGUS COUNTY

There are four parcels in Fergus County. One parcel is 0.48 acres and has county road access. The remaining parcels are 80 acres and have no legal access.

Motion made by Mr. McGrath to approve the minimum bid as appraised, with access, in Fergus County. Seconded by Ms. McCulloch. Carried unanimously.

B. MISSOULA COUNTY

The parcel in Missoula County is 40 acres, has legal access from Six-Mile and Wapiti roads, and is surrounded by private residences. The parcel included units from the Roman Creek timber sale, which will be harvested prior to the sale closing.

Motion made by Mr. Johnson to approve the minimum bid in Missoula County. Seconded by Mr. McGrath. Carried unanimously.

C. TOOLE COUNTY

The parcels in Toole County range from 6.28 to 640 acres. Some of the parcels are accessible from Highway 2, but provide no recreational opportunities as they are close to the ranch headquarters of the nominating lessee. All parcels were appraised with access only.

Motion made by Mr. McGrath to approve the minimum bids in Toole County. Seconded by Ms. McCulloch. Carried unanimously.

D. WHEATLAND COUNTY

There are three parcels in Wheatland County. Parcel No. 462 is accessible from Highway 12 and contains improvements owned by the Duncan Colony. Discharge of firearms is prohibited due to the proximity to colony developments.

Motion made by Ms. McCulloch to approve the minimum bid, as appraised with access, in Wheatland County. Seconded by Mr. McGrath. Carried unanimously.

1108-10 FINAL APPROVAL FOR DEBRUYCKER FARM LAND BANKING ACQUISITION

Ms. Sexton stated the DeBruycker farm is 5211.98 acres, with a mix of cropland, CRP, rangeland, and roadways. The property has two wind anemometers stationed on Teton Ridge. It also offers very good hunting, hiking, and bird watching opportunities. The purchase price is \$4,980,000. The rights to any wind energy development will be shared with the state. The property offers a 3.5 percent ROI for the Common Schools Trust, and from three to five percent ROI for the MSU Morrill and Public Buildings trusts.

Mark DeBruycker, co-owner, stated that the family appreciates the considerations that were given to them during the negotiation process.

Motion made by Mr. Johnson for final approval of the land banking acquisition. Seconded by Mr. McGrath. Carried unanimously.

1108-11 RIGHT-OF-WAY APPLICATIONS

Ms. Sexton singled out two ROW applications:

- ♦ The application from Debra Williams is on land that has been nominated for land banking. The historic access agreement would take place prior to the sale of the property.
- ♦ The application from the city of Belgrade is for a public recreation park and school related agricultural use.

Motion made by Ms. McCulloch for approval of the easements. Seconded by Mr. McGrath.

Ms. McCulloch stated that the Belgrade school district is excited for the developments that may come about from approval of the easement.

Motion carried unanimously.

Motion to adjourn made by Mr. Johnson. Seconded by Mr. McGrath. Carried unanimously.